

No. 14605

United States
Court of Appeals
for the Ninth Circuit

FRANCIS L. SAUGET,

Appellant,

vs.

JOSE C. VILLAGOMEZ,

Appellee.

Transcript of Record

Appeal from the District Court of Guam,
Territory of Guam.

FILED

FEB 17 1955

PAUL P. O'BRIEN,
CLERK



No. 14605

United States
Court of Appeals
for the Ninth Circuit

FRANCIS L. SAUGET,

Appellant,

vs.

JOSE C. VILLAGOMEZ,

Appellee.

Transcript of Record

Appeal from the District Court of Guam,
Territory of Guam.

INDEX

[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	6
Bond for Costs on Appeal	10
Certificate of Clerk	84
Complaint	3
Judgment	8
Minutes of the Court	11
Names and Addresses of Attorneys	1
Notice of Appeal	9
Statement of Points on Appeal	11
Statement of Points and Designation of Con- tents of Record Upon Appeal, Adoption of	86
Transcript of Proceedings	13
Findings of the Court	80
Witnesses, Defendant's:	
Flores, Francisco D.	
—direct	68
—cross	73
—by the court	73
Salas, D. M.	
—direct	74

Witnesses, Defendant's—(Continued):

Villagomez, Jose C.

—direct	59, 61
—cross	62
—by the court	61, 66

Witnesses, Plaintiff's:

Ching, Alfred

—direct	25
—cross	29
—redirect	30
—recross	31

Laguana, Jose C.

—direct	14
---------------	----

Sauget, Francis L.

—direct	39
—cross	40
—redirect	43
—by the court	44

Untalan, Jesus B.

—direct	32
—cross	34
—redirect	38
—by the court	37

NAMES AND ADDRESSES OF ATTORNEYS

FINTON J. PHELAN, JR.,
Suite 201-203, Mesa Bldg., Agana, Guam.
For the Appellant.

J. C. ARRIOLA,
Box 627, Agana, Guam.
For the Appellee.

In the District Court of Guam in and for the
Unincorporated Territory of Guam

Civil No. 55-54

FRANCIS L. SAUGET,

Plaintiff,

vs.

JOSE C. VILLAGOMEZ,

Defendant.

COMPLAINT

I.

Plaintiff is a citizen of the unincorporated territory of Guam and defendant is a citizen of the unincorporated territory of Guam. The amount in controversy, exclusive of costs and interest, exceeds the sum of Two Thousand (\$2,000.00) Dollars. This court has jurisdiction under the provisions of Section 1424(a) Title 48 USCA and Part I, Title I, Chapter II of the Code of Civil Procedure of the unincorporated territory of Guam.

II.

That the plaintiff is and has been since the 28th day of June, 1954, the owner and entitled to possession of that certain real property with the improvements thereon situated in the Municipality of Barrigada, unincorporated territory of Guam, and being known as and denominated as Lot No. 2288, Municipality of Barrigada, more particularly bounded and described as follows:

Commencing at a point marked "one" on plan, said point being South $33^{\circ}54''$ West 903.02 meters from Lola Monument No. 2; thence South $78^{\circ}34''$ West 111.77 meters to point No. 2; thence North $9^{\circ}42''$ East 67.79 meters to point No. 3; thence North $20^{\circ}31''$ East 10.41 meters to point No. 4; thence North $20^{\circ}34''$ East 22.21 meters to point No. 5; thence North $35^{\circ}34''$ East 99.53 meters to Point No. 6; thence North $51^{\circ}38''$ East 71.69 meters to point No. 7; thence South $7^{\circ}47''$ West 81.20 meters to point No. 8; thence South $7^{\circ}47''$ West 121.33 meters to the point or place of beginning.

less certain portions now held by the Government of Guam or the United States of America.

III.

That on the 1st day of July, 1954, a notice as set forth herein,

Notice to Quit

To: Jose C. Villagomez, Licensee of Jesus B. Untalan.

You will please take notice that the license under which you occupy a portion of the premises known as Lot No. 2288, Municipality of Barrigada, unincorporated territory of Guam, formerly owned by Jesus B. Untalan, which premises, by Deed of Sale, recorded on the 29th day of June, 1954, has been transferred to the undersigned, is, by this notice, terminated, and you are notified to remove from the said premises within the period of thirty (30) days from and after the 30th day of June, 1954.

You are further advised that the undersigned is now the owner of the said premises and that this notice is notice of cancellation of your revocable license, granted some time previously by the original owner, Jesus B. Untalan.

Dated at Agana, Guam, this 1st day of July, 1954.

/s/ FRANCIS L. SAUGET.

was sent by the plaintiff through the United States Mail, Registered Return Receipt requested, to the defendant herein demanding possession of the said premises.

IV.

That the defendant herein had been occupying said premises under an oral license for the purpose of farming, granted by the former owner, Jesus B. Untalan, which license was cancelled by the notice set forth in paragraph III above.

V.

That the property is valued in excess of Three Thousand (\$3,000.00) Dollars and has a reasonable rental value of Two Hundred Twenty-Five (\$225.00) Dollars per month.

VI.

That the defendant holds over and continues in possession of the said premises without the permission of the plaintiff and refuses to peacefully surrender possession.

VII.

That by reason of the unlawful occupancy of the

defendant, the plaintiff has been damaged in the sum of Two Hundred Twenty-Five (\$225.00) Dollars, the reasonable rental for the month of July, 1954, and the further sum of Two Hundred Twenty-Five (\$225.00) Dollars, the reasonable rental for the month of August, 1954. That the plaintiff will be damaged in the sum of Two Hundred Twenty-Five (\$225.00) Dollars for each month that defendant continues to hold and occupy the premises.

Wherefor, the plaintiff demands judgment for the restitution and possession of the property, together with triple rental from the first day of August until such time as possession may be restored, costs of suit and interest, and such other and further relief as to this court may seem just.

Dated this 12th day of August, 1954, at the city of Agana, unincorporated territory of Guam.

/s/ FINTON J. PHELAN, JR.,
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed August 12, 1954.

[Title of District Court and Cause.]

ANSWER

Comes now the Defendant, Jose C. Villagomez, and answers the complaint on file herein as follows:

I.

Defendant denies that the subject matter in controversy exceeds the sum of Two Thousand (\$2,000.00) Dollars exclusive of costs and interest.

II.

Defendant denies each and every allegation contained in paragraph II of the complaint.

III.

Defendant admits the allegation contained in paragraph III of the complaint.

IV.

Defendant denies each and every allegation contained in paragraphs IV, V, VI and VII of the complaint.

V.

For a further defense, defendant states that he purchased the property in controversy from Jesus B. Untalan on or about the year of 1936. That he had been paying taxes for the said property since the year of 1936 up to the present.

VI.

Defendant further alleges that he had been in open, exclusive, uninterrupted and adverse possession of the said premises from the year of 1936 up until the present.

VII.

For a further defense, Defendant alleges that the Plaintiff himself admits that the conveyance, to him, if any, is subject to Defendant's use and occupancy of the premises.

VIII.

That the Defendant received the price or award, to the exclusion of Jesus B. Untalan, a certain por-

tion of this land which was settled and satisfied by way of stipulation.

Wherefore, Defendant prays for a dismissal of the complaint for costs of suit and for other and further relief as this Court may deem just and proper.

Dated this 31st day of August, 1954.

/s/ JOSE C. VILLAGOMEZ,
Defendant.

Duly verified.

[Endorsed]: Filed August 31, 1954.

District Court of Guam, Territory of Guam
Civil Case No. 55-54

FRANCIS L. SAUGET,

Plaintiff,

vs.

JOSE C. VILLAGOMEZ,

Defendant.

JUDGMENT

The above-entitled cause came on regularly for trial on the 7th day of October, 1954, before the Court, J. C. Arriola, Esq., appearing for the Defendant, and Finton J. Phelan, Jr., Esq., for the Plaintiff, and evidence both oral and documentary having been introduced, the case argued, and the cause submitted for decision, and issue having been

joined in this possessory action, and the Court being fully advised;

Wherefore, by reason of the law, it is Ordered, Adjudged, and Decreed that the Plaintiff take nothing by this action.

So ordered this 22nd day of October, 1954.

/s/ PAUL D. SHRIVER,
Judge, District Court, Guam.

Approved as to Form:

/s/ FINTON J. PHELAN,
Attorney for Plaintiff.

Approved:

/s/ J. C. ARRIOLA,
Attorneys for Defendant.

[Endorsed]: Filed and entered October 22, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Francis L. Sauget, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on the 7th day of October, 1954.

Dated at Agana, Guam, this 4th day of November, 1954.

/s/ FINTON J. PHELAN, JR.
Attorney for Plaintiff.

[Endorsed]: Filed November 3, 1954.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to Jose C. Villagomez, defendant, the sum of Two Hundred Fifty Dollars (\$250.00).

The condition of this bond is that, whereas the plaintiff has appealed to the Court of Appeals for the Ninth Circuit by notice of appeal filed the 3rd day of November, 1954, from the final judgment of the District Court of Guam, entered in this action on the 7th day of October, 1954, if the plaintiff shall pay all costs adjudged against him if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if the judgment and order is modified, then this bond is to be void, but if the plaintiff fails to perform this condition, payment of the amount of this bond shall be due forthwith.

/s/ JOHN F. EAGAN,

/s/ FLOYD G. BLAKE.

Service of Copy acknowledged.

[Endorsed]: Filed December 6, 1954.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Plaintiff-Appellant herewith presents the points upon which he will rely on appeal.

I. The Court erred in not entering judgment for the plaintiff.

II. That the Court misconstrued the pertinent statute of the unincorporated territory of Guam.

III. That the judgment is contrary to and against the weight of the evidence.

IV. That the Court misconstrued the deed to the plaintiff.

V. That the Court erred in considering defendant's claim to hold title by adverse possession.

VI. The Court erred in not finally determining the issues.

/s/ FINTON J. PHELAN, JR.,
Attorney for Plaintiff-
Appellant.

[Endorsed]: Filed December 6, 1954.

[Title of District Court and Cause.]

Civil 55-54

MINUTES

9-10-54—Issues having been joined on August 31, 1954, Ordered case placed on the calendar for hearing on Friday, September 17, 1954, at 9:30 a.m., for resetting for Pre-Trial Conference.

9-17-54—Plaintiff appears by Finton J. Phelan, Jr., his attorney. Defendant appears by J. C. Ariola, his attorney. Having heard the remarks of the attorneys, Ordered case continued to Monday, September 27, 1954, at 1:30 p.m., for Pre-Trial Conference.

9-27-54—Pre-Trial Conference: Attorneys present. No written order. Ordered case set for Trial on Thursday, October 7, 1954, at 9:30 a.m.

10-7-54—Trial: Plaintiff appears in person and with Finton J. Phelan, Jr., his attorney.

Defendant appears in person and with J. C. Ariola, his attorney.

Thereupon comes the evidence on behalf of the plaintiff and certain documents marked Plaintiff's Exhibits I through V are offered in evidence without objection, accepted and filed.

Certain persons, to wit: Jose Laguana, Alfred Ching, Jesus B. Untalan and Francis L. Sauget, are duly sworn and testify.

V. B. Bamba was duly sworn by the Court as interpreter.

Question of jurisdiction of court arises and court rules that it has jurisdiction.

Plaintiff rests.

Thereupon comes the evidence on behalf of the defendant.

Certain persons, to wit: F. D. Flores, Juan L. Salas and Jose C. Villagomez, are duly sworn and testify.

Defendant rests.

Court finds the issues joined in favor of the defendant and against the plaintiff. Attorney for the defendant given ten (10) days in which to prepare the Findings of Fact, Conclusions of Law and Judgment for the defendant, settle with the attorney for the plaintiff and file same with the Court.

A true copy.

District Court of Guam, Territory of Guam
Civil Case No. 55-54

FRANCIS L. SAUGET,

Plaintiff,

vs.

JOSE C. VILLAGOMEZ,

Defendant.

Before: The Honorable Paul D. Shriver, Judge.

TRIAL

TRANSCRIPT OF PROCEEDINGS

Appearances:

For the Plaintiff:

FINTON J. PHELAN, JR.

For the Defendant:

J. C. ARRIOLA,

PALTING & ARRIOLA.

October 7, 1954; 9:30 A.M.

Trial to Court

Plaintiff present in court in person and with his counsel, Finton J. Phelan, Jr.

Defendant present in court in person and with his counsel, J. C. Arriola.

The Court: First order of business?

The Clerk: The matter of Francis L. Sauget vs. Jose C. Villagomez, coming on for trial.

The Court: Is the plaintiff ready?

Mr. Phelan: Yes, sir.

The Court: Is the defense ready?

Mr. Arriola: Yes, sir.

The Court: Very well, call your first witness.

Mr. Phelan: I have asked the bailiff to call him, sir, Mr. Alfred Ching. He is not here. Mr. Laguna. [2*]

JOSE C. LAGUANA

called as a witness hereby and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phelan:

Q. Are you, Mr. Laguana, an officer of the Department of Land Management, Government of Guam?

The Court: May I have the name?

A. Jose C. Laguana.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Jose C. Laguana.)

Q. (By Mr. Phelan): Are you with the Department of Land Management and an officer thereof of the Government of Guam? A. Yes, sir.

Q. As such do you have custody of the records?

A. Yes, sir.

Q. Mr. Laguana, have you certain of the records of the Department of Land Management here with you this morning? A. Yes, sir.

Q. The original records of the Government of Guam? A. Yes, sir.

Q. Does your department record all documents pertaining to real property?

A. Yes, that is true.

Q. Mr. Laguana, I ask you if you have with you a certificate of guaranteed claim to Jesus B. Untalan? A. Yes. [3]

Q. Covering Lot No. 2288, Barrigada?

A. Here is the certificate of guaranty claim covering Lot No. 2288, Barrigada.

Q. That is an official record of the Government of Guam? A. Yes.

Mr. Phelan: Is there any objection?

Mr. Arriola: No.

Mr. Phelan: If it please the court, may we offer this into the record and later substitute an official certified copy from Land Management?

The Court: The question always presents itself, of course, in these cases as to whether we can take into custody of the court, without the permission of Land Management, their original records. Obvi-

(Testimony of Jose C. Laguana.)

ously, it is satisfactory to the Court if the witness is permitted to release it.

Mr. Phelan: I have no intention of leaving the records here—just read it into the record and then introduce the certified photostat from the Government of Guam.

The Court: Well, of course, normally you don't have it introduced as an exhibit and then the original withdrawn to be replaced by a photostatic copy. rather than to read a document into the record when the document speaks for itself. You have no photostatic copy available?

Mr. Phelan: Not right now, no, sir. It will take a day or two to secure them from the Government of Guam. [4]

The Court: Will counsel stipulate as to what the record shows?

Mr. Arriola: Yes, sir.

The Court: Do counsel stipulate that this shows the title in the name of Jesus B. Untalan, is that correct, and what else does it show?

Mr. Phelan: Will you just read what that certificate shows?

The Court: Yes—just let me see it.

Mr. Phelan: Yes.

The Court: The parties stipulate that for present purposes there is introduced a document entitled "Certificate of Guaranty Claim," which recites that Jesus Blas Untalan has complied with all of the requirement to entitle him to claim full ownership in fee simple for certain property des-

(Testimony of Jose C. Laguana.)

ignated by official survey as Lot No. 2288 at Lalo, Barrigada, Guam, that this certificate is dated January 27, 1932, and signed by E. A. Root, Governor of Guam; that the certificate has been recorded in Volume 9 of the records of guarantee claims in the Department of Records and Accounts, Naval Government of Guam, as No. 3526. The record further shows the recording of and release of certain mortgages and a certain deed of conveyance under date of June 21, 1948, to the Naval Government of Guam. It is understood that by an agreement of the parties a photostatic copy of this document may be introduced as Plaintiff's Exhibit No. 1.

Q. (By Mr. Phelan): Mr. Laguana, do you have in your [5] possession a warranty deed from Jose B. Untalan to one Francis L. Sauget?

A. Yes, sir.

Q. Do you have the official original copy?

A. Yes, sir.

Mr. Phelan: Any objection to introducing that?

Mr. Arriola: No.

Mr. Phelan: Will you show it to the judge?

The Court: Now again you have a copy.

Mr. Phelan: I have a carbon copy of the original, your honor, that has been recorded.

The Court: You agree that the copy may be introduced as a duplicate?

Mr. Phelan: Duplicate of the original.

The Court: That is marked Plaintiff's Exhibit 2 and in connection with Plaintiff's Exhibit 2 the record should show that the original of this docu-

(Testimony of Jose C. Laguana.)

ment was filed as instrument 027298 on June 29, 1954, at the Department of Land Management, Land Records Section, and that the original deed was signed by Jesus B. Untalan on June 28, 1954, and acknowledged before a notary public whose name is not entirely clear to the court.

Mr. Phelan: I believe that was Juan Muna.

The Court: Juan Muna. And the record will then show that the name of the notary public is Juan Muna, M-u-n-a.

Q. (By Mr. Phelan): Mr. Laguana, have you in your possession [6] with you in the mutual distribution contained in Volume 8, page 158, the mutual distribution of the old Untalan estate to Jesus B.—

The Court: Now before you proceed, Mr. Phelan, let me ask this question: Under the law of Guam as it existed when this title in the name of Jesus B. Untalan was recorded—in other words the *modus constat* system was that possession of such a certificate was *prima facie* title?

Mr. Phelan: Yes, your Honor, I believe it is.

The Court: To the land; I mean you aren't required to go back of that to show that the grantor had title?

Mr. Phelan: No, this instrument is the distribution of Mr. Untalan's father's estate and it would show not only this lot in question but the distribution to Mrs. Villagomez of the adjacent lot, 2289.

The Court: But are we dealing with the question as to whether Jesus Untalan was the owner? Now you have shown, under the laws of Guam, he

(Testimony of Jose C. Laguana.)

was the owner of this particular lot and that subject to a deed, which is not before the court at the moment, from the Naval Government of Guam, a formal conveyance, he was the owner and sold his interest to the plaintiff in this case. Now since those matters appear of record, is it not the obligation of the defendant to overcome them?

Mr. Phelan: We have that deed here from the Naval Government of Guam when he sold part of it and there is another deed [7] to convey another part.

The Court: I think that should be explained.

Mr. Phelan: All right. We don't have to put this in.

The Court: I don't see where in your case in chief you have any responsibility to go further than to show that the land was owned by the predecessor in title and that the land was conveyed to you.

Mr. Phelan: Well, if we need to we can put it in later. It might explain some of the confusion existing.

The Court: That is up to the defendant.

Mr. Phelan: I will withdraw that question at this time.

The Court: Now did you want to question as to the Navy?

Mr. Phelan: There is the deed to the Naval Government of Guam, which shows on that certificate of title the conveyed part of this property.

The Court: The certificate of title itself, of course, doesn't indicate that.

(Testimony of Jose C. Laguana.)

Mr. Phelan: It shows there is a deed to the Naval Government of Guam. It didn't convey it all. We should introduce the deed to show that he had some left.

The Court: What I am pointing out is that the records themselves show that there was a conveyance prior to that to Mr. Sauget.

Mr. Phelan: I will show that now.

The Court: Yes, that is what I thought you would do. [8]

Q. (By Mr. Phelan): Do you have an official copy of a deed from Mr. Untalan to the Naval Government of Guam? I believe it is document 520 or 521. I believe you have both of those?

A. Yes, we have a full warranty deed of conveyance to Jose-Villagomez and Antonia Villagomez, husband and wife, and Jesus B. Untalan as parties of the first part and Naval Government of Guam as parties of the second part.

Q. What does it convey?

A. It conveys a portion of parcel—of lot No. 2288, Barrigada, containing an area of 14,409 square meters.

Q. And what does that other deed show?

A. The other deed shows Mr. Jose Villagomez and Antonia Villagomez, husband and wife, parties of the first part, and Naval Government of Guam, party of the second part, conveying that portion of Lot No. 2289, township of Barrigada, and containing an area of 9,896 square meters.

(Testimony of Jose C. Laguana.)

Q. Are there maps incorporated in those deeds?

A. Yes, sir.

Q. Would you show those to the court please?

The Court: Now showing those to me isn't going to clarify your record. You have to have testimony there, and if you prefer, copies of the maps showing that the property deeded here is not included in the property which was deeded to Mr. Sauget.

Mr. Phelan: It shows on these maps.

The Court: Well, that again—those are the [9] original records?

Mr. Phelan: Yes, we will stipulate them in and substitute photostatic copies.

The Court: Well, again, are the parties prepared to stipulate that the conveyances which were made to the Naval Government of Guam, are not involved in the property in this case?

Mr. Arriola: I thought so as during the pretrial I thought the plaintiff had purchased the land and the reversion. Now there is no reversion because the deed just mentioned is warranty to the government.

The Court: Well, what we are concerned with here are the rights as between the plaintiff and defendant now regardless of reversionary rights. Is the defendant prepared to stipulate that the land which was conveyed to the Naval Government of Guam out of Lot No. 2288, is not involved in the present controversy?

Mr. Arriola: In so far as notice is concerned, sir. That is our only defense in here. The deed was signed by the plaintiff, the defendant and by the

(Testimony of Jose C. Laguana.)

defendant's wife and that is part of our defense against the plaintiff.

Mr. Phelan: You missed the point of the court.

The Court: What I am asking now, Mr. Arriola, is whether the descriptions contained in these deeds to the Naval Government involve in any way the land in controversy here?

Mr. Arriola: For that purpose, no, sir. [10]

The Court: For that purpose, no. Very well, the record will show that the parties stipulate that while certain property was conveyed to the Naval Government of Guam, without determining the nature of that conveyance, that such property is not involved in that which is in controversy in the present suit.

Mr. Arriola: All right, sir.

Mr. Phelan: We will substitute photostatic copies of these instruments. Would the court care to look at the original?

The Court: I don't see that it is of any value since you stipulate.

Mr. Phelan: It might help visualize the picture since it is a map.

The Court: What I am concerned with is the land you claimed to have purchased; that is the crux——

Mr. Phelan: Yes.

The Court: Of the case here. The only purpose of introducing the other deeds and accompanying maps is to show that the notations and the deed or certificate from the Naval Government to Jesus B.

(Testimony of Jose C. Laguana.)

Untalan and that the conveyances mentioned did not include the land which is in controversy here.

Mr. Phelan: It did not convey the entire lot to the Naval Government of Guam; part of it was not conveyed.

The Court: Yes, that is exclusive, in other words, with the land with which we are concerned here. Now that brings us, doesn't it, Mr. Phelan, to where you have shown that Jesus B. [11] Untalan was the registered owner of certain land, that in 1948, he deeded a portion of that land and in 1954 he deeded land to the plaintiff in this case.

Mr. Phelan: I have one other question.

Q. (By Mr. Phelan): Mr. Laguana, did you check the records to see if there were any other instruments pertaining to this particular lot?

A. Yes, sir.

Q. Did you find any instruments?

A. No, sir.

Q. You have brought all of the instruments that you could find pertaining to Lot 2288, Barrigada?

A. Yes, sir.

Mr. Phelan: Your witness.

Mr. Arriola: May I see that map? Your Honor, I would like to introduce this map showing the description of the property in question.

The Court: That is the original record of the Government of Guam?

Mr. Arriola: If the counsel for plaintiff would stipulate as to a copy of this map——

(Testimony of Jose C. Laguana.)

Mr. Phelan: As a matter of fact that is a larger map than the one on the deed. I am perfectly willing, but we have already stipulated that the deed would be introduced and with it a copy of the [12] map.

Mr. Arriola: The same map?

Mr. Phelan: Same map.

Mr. Arriola: Yes, sure. Does the court wish to look at this map, sir?

The Court: This is the map——

Mr. Arriola: Showing Lot 2288-1, conveyance to the Navy.

The Court: Where does it come from? An original map of the Government of Guam?

Mr. Arriola: Is this the original or a copy of the map you have on file?

The Witness: May I see it? It's a copy of a map that we have on file.

The Court: That is the property of the Government of Guam?

The Witness: This is.

The Court: Do you have any objection to that being introduced in evidence?

The Witness: Well, no, sir.

The Court: Does the Government of Guam want this particular piece of paper back, because if it goes in the record they won't get it?

Mr. Phelan: You will give us that?

The Witness: Yes.

Mr. Arriola: It is up to the plaintiff to introduce it at this time. Do you want to?

(Testimony of Jose C. Laguana.)

Mr. Phelan: May I just examine it [13] carefully?

The Court: I think the defendant can have it marked for identification purposes, but they are not putting on their case now.

Mr. Phelan: It's the same map. I will offer it into evidence to show the location of the property sold to the Government of Guam and the remaining portions now in question, that being sold to the Government of Guam being colored in red and that being retained by Mr. Untalan at that time being colored in green.

The Court: Is that agreed?

Mr. Arriola: Yes, sir.

The Court: Very well, it will be received as Plaintiff's Exhibit 3.

Mr. Arriola: No further questions of this witness.

The Court: Thank you, Mr. Laguana, you may be excused. Call your next witness. [14]

ALFRED CHING

was called as a witness hereby and on behalf of the plaintiff, was first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phelan:

Q. Will you please state your full name, occupation and residence?

A. Alfred Ching, Real Estate broker, surveyor and contractor.

(Testimony of Alfred Ching.)

Q. Mr. Ching, are you familiar with Lot 2288, Barrigada?

A. Lot 2288 is quite a large lot; the lot that I am familiar with is 2288-1.

Q. Mr. Ching, is that the remainder of Lot 2288?

A. That is the remainder of Lot 2288.

Q. Did you appraise that remaining portion of that lot?

A. I went out on Tuesday and examined Lot 2288-1 and made an appraisal on it.

Q. Mr. Ching, will you tell us what your appraisal was based upon?

The Court: Now before Mr. Chin proceeds—I am a little bit confused. Are you talking about Lot 2288? That is the only evidence we have before us. He describes that lot as 2288-1.

The Witness: 2288-new-1. Every time a portion is cut off they assign a new number to the remaining portion that is cut off.

The Court: I see, very well.

Mr. Phelan: Will you continue, please? [15]

A. The appraisal value basis on 2288-new-1?

Q. What was your appraisal value of that lot?

A. I appraised the lot at \$2,135.00 based on \$2.50 per square meter.

Q. Mr. Ching, did you appraise just the land itself or did you consider any improvements?

A. No improvements whatsoever on the land, just the land itself.

Q. Did you cause a map of that particular portion which you appraised to be made?

(Testimony of Alfred Ching.)

A. Yes.

Q. Does it have the area and description?

A. The metes and bounds description; we computed the area and metes and bounds description.

Mr. Phelan: Any objection to that going in?

Mr. Arriola: Let me see it. No, sir.

Mr. Phelan: I offer this in evidence as Plaintiff's Exhibit 4. Have you any objection to its being introduced in evidence?

Mr. Arriola: No objection.

Mr. Phelan: May it be received in evidence, your Honor?

The Court: Without objection it will be received.

Mr. Phelan: This shows exactly the area that is in question.

Q. (By Mr. Phelan): Would you describe for the record how that lot is situated? [16]

A. The lot is situated at the corner of Routes 10 and 15. That is the Navy designation for the roads. Its frontage is 97 feet on Route 15 and 60 feet on Route 10. The total area of the lot is 858 square meters.

Q. Is there water and power to that lot?

A. There is water and power to the lot at present.

Q. Mr. Ching, are there any improvements situated on that lot?

A. There is a two-story frame dwelling on the lot, which is partially set on concrete columns.

Q. Could you estimate the reasonable value of that structure?

(Testimony of Alfred Ching.)

A. I had no opportunity to go into the house. I based my value from what I seen outside. I would say that the house would be valued about \$8,500.00.

Q. That house is on this lot?

A. As far as I can see.

Q. Did you have occasion to appraise the reasonable rental value of this property?

A. Without seeing the inside, the house with power and electricity and the usual conveniences of a house—I would say at the present rental market it would rent for about \$100 a month.

Q. What would the reasonable business rental value of this entire piece of property be?

A. Based on what rentals have been paid on Guam, I would [17] say a reasonable value—may I ask one question before I answer that? Will you base it on a lease or a monthly rental? There is a difference. Based on a month rental, it should rent at approximately \$75 a month; based on a leasehold, long term, it should rent for \$50 a month with taxes paid by the lessee.

Q. That is for business purposes. Would that include constructing business buildings by the lessee?

A. That would.

Q. Then the property has substantial rental value?

A. The property has substantial rental value.

Q. Are the two roads paved roads or dirt roads?

A. They are both paved roads.

Q. And the map which we just introduced was

(Testimony of Alfred Ching.)

prepared by whom? A. An engineering firm.

Q. And that faithfully represents the particular portion that you appraised?

A. Yes; it is the exact portion that I appraised.

Mr. Phelan: I have no further questions.

Mr. Arriola: May I see Plaintiff's Exhibit No. 4, please?

Cross-Examination

By Mr. Arriola:

Q. Lot No. 2288-new-1, Mr. Ching, shows an area of 858 square meters. Where did you get this computation?

A. We took the original lot 2288 and we took out the portion the Navy took out for condemnation and took out the portion [18] where Route 15 cut off and that is the exact balance left.

Q. And you valued this lot at approximately \$2.50 per square meter? A. Yes.

Q. Just what did you base your appraisal on?

A. Based it on the various sales made throughout the last year or so throughout the island.

Q. Not around that particular lot?

A. If you base it on Barrigada—I do not have the exact figures—but they sold for around \$700 to \$800, without improvements, in from the roadways.

Q. What is the size of those pieces?

A. Around 800 to 1,000 square meters and they were sold between \$800 and \$700 without any improvements at all.

(Testimony of Alfred Ching.)

Q. Now, you appraised this lot with the building on the lot, is that correct? A. Correct.

Q. At \$2.50 a square meter? A. Correct.

Q. Did you notice how deep the top soil was on this lot?

A. The top soil is not very deep, just a thin covering over.

Q. Were there any fruit or trees on the lot?

A. There were not too many fruit trees or bearing trees on the lot. [19]

Mr. Arriola: I have no further questions, sir.

Mr. Phelan: I have one or two questions.

Redirect Examination

By Mr. Phelan:

Q. Mr. Ching, did you appraise this based upon desirable or value as farm or business property?

A. I based my appraisal on what the property could be sold for today.

Q. And its possible use?

A. Its possible use.

Q. Is depth of top soil or number of fruit trees to be considered for business purposes?

A. No.

Mr. Phelan: No further questions.

Mr. Arriola: One question.

(Testimony of Alfred Ching.)

Recross-Examination

By Mr. Arriola:

Q. Is Lot 2288-new-1 located in a business, residential or farming section?

A. It fronts on a main street and in Guam the zoning laws do not prevent anyone from establishing a business.

Q. Are there businesses in that area?

A. About a block further, toward BPM there is a store, I think.

Q. That is the only business? [20]

A. Right.

Q. Are there any other houses around that lot?

A. There are several houses on both sides of the street.

Mr. Arriola: No further questions.

The Court: You may be excused, Mr. Ching.

Mr. Phelan: Mr. Jesus B. Untalan. May it please the court, Mr. Untalan's English is rather limited and Mr. Bamba has volunteered to interpret these few questions.

The Court: We are very happy to have Mr. Bamba serve as interpreter.

(V. B. Bamba, called upon to act as interpreter for the witness, Jesus B. Untalan, was duly sworn and translated all questions propounded in the English language to the Chamorro language and all answers given in the Chamorro language to the English language, as follows.) [21]

JESUS B. UNTALAN

called as a witness hereby and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows, through the interpreter:

Direct Examination

By Mr. Phelan:

Q. Will you please state your name, occupation and residence?

A. My name is Jesus B. Untalan, farmer by occupation, and residence, Mangilao, Barrigada.

Q. Mr. Untalan, did you own Lot 2288, Barrigada? A. Where is that part of Barrigada?

Q. Lalo, Barrigada, Price Road. A. Yes.

Q. Mr. Untalan, I show you Plaintiff's Exhibit 2, a deed, and ask you if this is a copy executed by you to one Francis L. Sauget?

A. Yes, I remember executing a deed in favor of Mr. Sauget for my property.

Mr. Phelan: This is already in.

The Court: Yes.

Q. (By Mr. Phelan): You were paid for that sale? A. Yes.

Q. Mr. Untalan, I show you a piece of paper here which purports to be a receipt for real estate taxes, and I ask you if that is a tax receipt from the Government of Guam to you [22] for taxes paid on this lot? A. Yes.

Mr. Phelan: May this be marked Exhibit 5? Any objection?

The Court: Plaintiff's 5? 1

(Testimony of Jesus B. Untalan.)

Mr. Phelan: Yes, sir. It is the same tax receipt we had at the pretrial conference. May it be accepted in evidence? I am offering it in evidence.

The Court: Any objection?

Mr. Arriola: No objection, sir.

The Court: It will be received without objection.

Q. (By Mr. Phelan): Mr. Untalan, did you ever sell any other portions of this lot, 2288, Lola, Barrigada, at any time?

A. No, I have never sold any.

Q. Mr. Untalan, did you several years ago convey part of it to the Government of Guam, part of the big lot, the original lot?

A. There was some portion that the government took over and the government was using it for farm purposes.

Q. Is that part of the agricultural farm today?

A. Yes.

Q. Aside from the portion taken for the agricultural farm was any portion taken of the original lot? Now for the record, by the United States or the Naval Government of Guam? A. Yes.

Q. The portion you sold to Mr. Sauget was that the remainder after these other pieces were taken from the original lot? [23] A. Yes.

Q. Did you ever lease that remaining portion to anyone? A. No, sir.

Q. Did you ever authorize anyone to construct a permanent structure on this portion?

A. Yes, somebody constructed a permanent structure but that property belonged to me.

(Testimony of Jesus B. Untalan.)

Q. Was that structure built with your permission?

Interpreter: He didn't answer me. May I clarify the question?

Mr. Phelan: Yes, please.

A. I didn't give anybody any authority to construct any permanent structure.

Q. Considering just the portion which you sold to Mr. Sauget, have you ever conveyed or sold any interest in that piece to anyone other than Mr. Sauget? A. No.

Mr. Phelan: Your witness.

Mr. Arriola: May I have Plaintiff's Exhibit No. 2, please, the deed?

Cross-Examination

By Mr. Arriola:

Q. I will show you Plaintiff's Exhibit No. 2 and ask you to identify this again, whether this is your deed to Mr. Sauget; I will just ask you whether you can identify that document, please? [24]

Mr. Phelan: Here is the original.

The Court: Well, you have admitted this is the copy of the original.

Interpreter: It doesn't have any signature.

Mr. Phelan: Then ask him if this is his signature.

The Court: Just ask him—you are referring to the reservation in the deed, aren't you?

Mr. Arriola: And for purpose of impeachment.

(Testimony of Jesus B. Untalan.)

The Court: Well, if you are dealing with the reservation——

Mr. Arriola: Yes, sir.

The Court: Well, then why don't you ask him if he remembers that was in the deed.

Q. (By Mr. Arriola): Mr. Untalan, you testified in the direct examination that you had never authorized anyone to construct or build on lot 2288, isn't that correct?

A. No, I didn't authorize.

Q. Mr. Untalan, when you signed that deed to Mr. Sauget you understood what you were signing?

A. I was conveying my property.

Q. Were you aware at the time you executed the deed that the deed contained a provision that granted verbal license to Mr. Villagomez to use the land?

Mr. Phelan: If it please the Court, I believe this is immaterial to the point at issue. I believe we are drifting away. [25]

The Court: Well, this thing is going to resolve itself into the question of what rights the defendant has, and I suspect that this is the conclusion we have to reach, so let us begin at the purpose of the reservation in the deed. The reservation, of course, speaks for itself. If it is sufficiently clear it explains just what was intended, and I suggest that you explore the prior existent situation, when the house was built, and what the circumstances it was built under, and so forth.

Q. (By Mr. Arriola): Mr. Untalan, do you re-

(Testimony of Jesus B. Untalan.)

member when Mr. Villagomez built or constructed a house on that lot, 2288?

A. I don't remember.

Q. You were the owner of this lot since when, Mr. Untalan?

A. Since the year 1904 when I purchased it.

Q. Was not this piece of property, Mr. Untalan, delinquent in taxes for a period of three years from 1933 to 1936?

A. No, it was never delinquent.

Q. And you did not authorize or you did not grant anyone to build a house on this lot?

A. No, I didn't give any license. They just went right in and constructed it.

Q. Did not the defendant, Mr. Villagomez, give you \$125 for this lot in 1936?

A. No, sir.

Q. How much were you paid for this lot No. 2288 by Mr. Sauget? [26]

Mr. Phelan: I think that question is irrelevant. The exhibit speaks for itself.

Mr. Arriola: There is the issue here as to whether the court has jurisdiction, sir.

The Court: We are getting into the field of equity, and I will overrule the objection. He may answer how much he paid.

A. \$1,000.00.

Q. Were you personally paid by Mr. Sauget?

A. Yes.

The Court: What is the consideration recited to be?

Mr. Phelan: "One dollar and other valuable considerations."

Q. (By Mr. Arriola): Now when you sold a

(Testimony of Jesus B. Untalan.)

portion or part of Lot No. 2288 to the Government of Guam in 1948 did not your sister, Mrs. Villagomez, and defendant Villagomez join you in the deed as grantors? A. No.

Mr. Arriola: No further questions.

Mr. Phelan: I have no questions.

Examination by the Court

Q. Mr. Untalan, who built the house on the land?

A. Villagomez.

Q. When did he build the house?

A. I do not remember the date.

Q. About what year was it?

A. I do not remember the year. [27]

Q. Was it after the war?

A. Long before the war. Long before the war the house was built.

Q. Did Mr. Untalan see the house being built when it was originally built? A. No.

Q. When did he first know that the house had been built? A. I do not remember.

Q. Has Mr. Villagomez lived in the house?

A. You mean right now?

Q. Yes. A. Yes.

Q. And was Mr. Villagomez living in the house when he sold the land to Mr. Sauget? A. Yes.

The Court: Any questions?

Mr. Phelan: I have several, your honor.

(Testimony of Jesus B. Untalan.)

Redirect Examination

By Mr. Phelan:

Q. Mr. Untalan, is not Lot 2288 adjacent to Lot 2289, which is owned by Mrs. Villagomez?

A. Right.

Q. Did you ever have the boundary line between those two lots surveyed?

A. There was a map but it was lost during the war and the [28] monuments were destroyed.

Q. Did Mr. Villagomez ever tell you he was building on your land?

A. No, he didn't ask me.

Q. Did he ever say on what lot he was building his house to you? A. No.

Q. Did he ever state that he was building on his wife's lot? A. No, sir.

Mr. Phelan: I have no other questions.

The Court: Any questions?

Mr. Arriola: No further questions.

The Court: Very well, the witness may be excused and the court will take a ten-minute recess.

(The court recessed at 10:40 a.m. and reconvened at 10:55 a.m.)

Mr. Phelan: Please take the stand, Mr. [29] Sauget.

FRANCIS L. SAUGET

the plaintiff herein, called as a witness hereby on his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phelan:

Q. Will you please state your name, address and occupation?

A. Francis L. Sauget, businessman and contractor, Asan.

Q. Are you the plaintiff in this case, Mr. Sauget? A. I am.

Q. Mr. Sauget, in June of this year did you purchase from one Jesus B. Untalan a piece of property located at Lola, Barrigada?

A. I did.

Q. Is that property known as Lot 2288?

A. Yes.

Q. Mr. Sauget, did you pay Mr. Untalan value and consideration for that property?

A. I did.

Q. Did you pay him in cash? A. I did.

Q. Did you know Mr. Untalan before you made this purchase? A. No, sir, I did not.

Q. It was a business transaction?

A. Strictly business transaction. [30]

Mr. Phelan: I have no further questions.

(Testimony of Francis L. Sauget.)

Cross-Examination

By Mr. Arriola:

Q. Mr. Sauget, how much did you pay for this lot? A. I paid \$1,000.00 for this lot.

Q. And did you search the records in the Department of Land Management prior to the execution of the deed?

A. I searched the land records and found Jesus B. Untalan to be the owner of the property in question and that is why I——

Q. Did you personally search the records?

A. I personally looked at the records.

Q. Did you personally notice the map of Lot 2288? A. I only saw one map.

Q. That map was dated 1947? May I have the map there, the blue one? I think it's Plaintiff's Exhibit No. 4. I will show you, Mr. Sauget, Plaintiff's Exhibit No. 3, and ask you whether that is the map you saw at the Department of Land Management? A. Yes, that is the map.

Q. And you bought 2288-new-1?

A. 2288 is the lot that I bought.

Mr. Phelan: The deed speaks for itself.

Mr. Arriola: May it please the court there was evidence introduced that the lot in question was 2288-new-1.

The Court: That was the testimony of Mr. Ching.

Mr. Phelan: We stipulated that the deed con-

(Testimony of Francis L. Sauget.)

veyed certain [31] rights in the remainder of 2288. The only part in controversy was the small portion, 88-1.

Mr. Arriola: That is the question I asked.

Mr. Phelan: No, it isn't. I think the deed speaks for itself as to what he bought and what he intended to be conveyed.

Mr. Arriola: The deed shows a tract of land containing 16,000 square meters. Now we come down to 858 square meters. What is the—the court is interested as to whether the house in question is located on the 858 square meters.

Mr. Phelan: I don't think that's an issue.

Mr. Arriola: Well, plaintiff brought out by his witnesses as to whether the building was on 2288 or 2289.

The Court: Mr. Ching's testimony was as to the reasonable rental value of the building and so forth.

Mr. Phelan: And also of the bare lot for business purposes, but on cross-examination I think he must stick to the questions brought on direct examination. If he wants to put his case on, let him put his own witness on.

The Court: Well, this deals with the circumstances surrounding the sale and since this is the plaintiff in the case, why he can be asked. Now what was your question?

Q. (By Mr. Arriola): I asked the plaintiff whether he had looked at that particular map now in his hands, Plaintiff's Exhibit No. 3, sir.

(Testimony of Francis L. Sauget.)

A. I did not look at this particular map before I made the [32] purchase.

Q. Did you look at any other map?

A. All I looked at was an area map showing 2288.

Q. That was not the map, though?

A. No, not until after.

Q. Mr. Sauget, I will show you the original copy of Plaintiff's Exhibit No. 3 and ask you whether this is the map you saw?

A. No, I never even seen that map before I made the purchase.

Q. What document or documents did you see, if any, Mr. Sauget?

A. The only document I seen was a land registration record.

Q. The title?

A. The title certificates on the suburban area of Barrigada.

Q. And you did not see this warranty deed from the defendant, his wife and Mr. Untalan to the Government of Guam?

A. I did not see that.

Q. Did you see the premises prior to the transaction?

A. I had never inspected the premises outside of knowing where the location was and where it was described to me and the area involved with the stipulation that the government had two takings, and I would recognize the government takings was

(Testimony of Francis L. Sauget.)

the only thing, and I did not know the exact amount of taking by the government.

Q. And you did not know either that it was a conveyance and not a lease? [33]

A. I did not know that. The records showed at that time, that I seen, it was a leasehold but I did know that there was a minimum of 558 square meters left in the property involved. That was what I was interested in.

The Court: 558?

The Witness: 858.

Q. (By Mr. Arriola): And when was the first time that you noticed that there was a building located on the lot you had just purchased?

A. When I went out and made an examination.

Q. Approximately how many days and weeks after you made the purchase?

A. It was the day I purchased the property. I went and looked at it after the deed was signed.

Mr. Arriola: No further questions.

Mr. Phelan: I have one or two questions on redirect.

Redirect Examination

By Mr. Phelan:

Q. Mr. Sauget, on cross-examination you were asked if you had searched the records on this property. Did you search to see if taxes were paid?

A. Yes, I found that taxes were paid on there. There was no lien on the property.

Q. Did the tax record show any improvements?

(Testimony of Francis L. Sauget.)

A. No, the tax records showed that it was a bare piece of [34] property.

Q. You were interested in a lot?

A. That is right.

Mr. Phelan: I have no further questions.

Mr. Arriola: No further questions.

Examination by the Court

Q. Where is the house that has been mentioned here? Is that on the 858 square meters?

A. After examination it was found to be on this here. Upon search of the tax records it shows that the house was erected and taxes paid on 2289, which was Antonia Villagomez. There is the house and lot shown on the records that I checked last week. The receipt states the house and lot on that one, but the other one shows no improvements in the record whatsoever, no place in the tax record.

Q. When was the first time you saw the house?

A. The day after Mr. Untalan signed the deed. I had no right on the property prior to that time. I didn't even know where the exact metes and bounds was outside that it bordered on the highway and Fadian Point, making it crossroads property.

Q. Did you purchase the property for investment or for what use?

A. I purchased the property to build my home and also to possibly put in a store some time similar to what we have in Asan because I have a lease, one and a half years left on the present [35] lease and

(Testimony of Francis L. Sauget.)

it will expire and no chance for renewal so I had to find other property to move and build my residence and business.

Q. Did I understand that you did not inspect the property to determine whether it was suitable to build a home?

A. Well, I knew the location. I had to pass it to go to Mr. Untalan's, that it was the corner of the road, Fadian Point and Barrigada Road.

Q. But you never made any physical inspection of the interior of the property?

A. No, I never made any physical inspection of it—only the location of the property.

Q. Have you seen the home since?

A. I have seen the home since.

Q. What kind of a house is it?

A. Well, it's a frame house built on concrete and partial concrete posts.

Q. How large?

A. Oh, I would say it is about 32 x 36. A lot of lean-tos have been added on there.

Q. Does the contract give any idea as to its value?

A. Well, I don't think it would be possible to sell the thing for over \$4,000.

Q. With the land?

A. Because for one reason it doesn't have any conventional type of construction. It seemed like it was built and then [36] something added to it, just spread out over the area it now covers. It doesn't

(Testimony of Francis L. Sauget.)

seem like there was any design in mind. Something like that there is not too much chance for resale.

Q. What in your opinion is the rental value of 858 square meters?

A. Well, the price they are asking right now for areas of that kind for my purpose they have been all the way from \$75 to \$100 for a lease. As soon as they find out you are a businessman and what you want to use it for they are out after you.

Q. You say \$100 would be the outside figure?

A. It would be the maximum figure, Judge.

Q. Do I understand then, Mr. Sauget, at the time you bought this property you thought you were buying land alone and you were not buying any improvements?

A. Well, there was no mention of any improvements at all when I purchased the property.

Q. And you didn't even know that any improvements existed on it?

A. It was not brought to my attention.

Q. And I presume it is also clear, is it, Mr. Sauget, that the only portion of this lot to which you would be entitled to immediate possession, under your understanding when the deed was given, is the 858 square meters?

A. That is right.

Q. Anything else would be reversionary? [37]

A. That is the reason why I think the scope of the deed was to cover the entire amount in case the government at any time decided to sell it back to the owners. The amount of the property involved—the person holding the deed would have first priority

(Testimony of Francis L. Sauget.)

of purchase and that was the reason why the whole thing was mentioned as a conveyance with the stipulation as according to the deed, it would recognize all claims, leaseholds and so forth to the government.

Q. In other words, what you intended by getting title to the additional property over and above the 858 square meters was simply to step into the shoes of the former owner in the event that the property would subsequently be sold? A. Yes, sir.

The Court: I have no further questions.

Mr. Phelan: No questions.

Mr. Arriola: No questions.

The Court: You may be excused.

Mr. Phelan: The plaintiff rests at this time, your Honor.

The Court: May I ask counsel whether I have jurisdiction over the evidence?

Mr. Phelan: I think you have.

Mr. Arriola: I don't think the court has any jurisdiction, your Honor. Both the plaintiff and his witness testified that the maximum rental value of this property is \$100.

Mr. Phelan: The value has been testified as well over [38] \$2,000.

Mr. Arriola: The value actually paid is \$1,000.

Mr. Phelan: We are not arguing it for rent. We are arguing for possession.

The Court: I am open for discussion to see if we can come to a meeting of the minds. This is an

action of ejectment; it is not an action to acquire title.

Mr. Phelan: There isn't any question of title.

The Court: In other words, the position taken by the plaintiff is that defendant is on his property and it is unlawful detainer.

Mr. Arriola: Unlawful detainer or ejectment we have 20 days to——

Mr. Phelan: Public Law 17, as I understand it, gives the court jurisdiction in two cases—when the value of the property exceeds \$2,000 or when the rental is \$200 a month.

The Court: Well, it doesn't say that, does it?

Mr. Phelan: I think the answer——

The Court: The jurisdiction of this court is, of course, in reverse in that it states that it is the jurisdiction of the Island Court in all proceedings of forcible unlawful detainer where the rental value is not more than \$200 per month. Now I don't think we have a rental value here of more than \$200.

Mr. Phelan: No, but the property in a way has been converted into title because the defendant has claimed title in his answer. [39]

The Court: That is what I am getting at, but your outside figure here is \$100 monthly rental on a leasehold basis. The language of the Act is "in all proceedings in forcible entry or unlawful detainer where the rental value is not more than \$200 a month and where the whole amount of damage claimed is not more than \$2,000."

Mr. Phelan: If it please the court, it's impossible in this type of action to set forth the dam-

age except make a claim for rent. Now if Mr. Sauget does not get his property I think there is no question, based on the evidence today, that he has been damaged in excess of \$2,000.

The Court: You have shown no such damage. Where have you shown such damage?

Mr. Phelan: If Mr. Sauget does not get his property he has been damaged to the value of it and the property is worth over \$2,000, and in this case I think the defendant by the form of his answer has converted this into an action where it is a question of title and the property is worth over \$2,000. The defendant claims he owns the property in his answer. May it please the court, this is a verified answer. In paragraph 5 he states he owns it and has been paying taxes on it. In paragraph 6 he claims he owns it by adverse possession.

The Court: He starts out by denying that the value is \$2,000.

Mr. Phelan: I think we have proven that the value is over [40] \$2,000.

The Court: You only paid a consideration of \$1,000. You made no investments, according to the evidence, on the land since then.

Mr. Phelan: He hasn't been able to get into it.

The Court: True.

Mr. Phelan: Well, as a matter of fact the purchase price has nothing to do with the actual intrinsic value of the property and I think that is the test. Any defense that is set forth by the defendant is set forth by way of an answer and not

by way of a cross-complaint. Under the federal rules I thought there was supposed to be a complaint.

The Court: All they ask for is dismissal of your complaint and for costs of suit. Now my problem, you see, therefore, is to find out whether the allegations in your complaint have been proven. We are dealing now with a *prima facie* case and it is a question of whether by reason of unlawful occupancy the plaintiff has been damaged in the sum of the reasonable rental for the month of July and the further sum of \$225, reasonable rental for the month of August. Now under your evidence here your damages would not exceed \$100 instead of \$225.

Mr. Phelan: My impression is that an allegation of jurisdictional amount made in good faith even though you are not able to prove it brings it within the jurisdiction of the court.

The Court: Well, rentals are somewhat different than the [41] problem we have in connection with a court action where a man's leg is broken and at the time action is brought you don't know whether he has permanent injury or not.

Mr. Phelan: This is not a case of a landowner trying to evict a tenant. It is the landowner trying to get a man off his land, and he is damaged by not having possession. He wants to use that land.

The Court: That obviously is something that can be tried under your general issue of eviction. Now what you ask for is the reasonable rental of the land for the period that the person is held over after the notice and that he be ejected.

Mr. Phelan: Yes, primarily we want him out.

The Court: I can see that an action properly framed might bring the matter within the jurisdiction of this court.

Mr. Phelan: Well, if the court feels that we haven't, I think we can amend the pleadings to conform with the evidence. Right now our action is to get back the property of over \$2,000 for the owner to use.

The Court: You are talking about property worth \$10,000?

Mr. Phelan: I said it is worth over \$2,000.

The Court: Well, didn't Mr. Ching testify this house was worth around \$8,500?

Mr. Phelan: Mr. Sauget testified \$4,000.

The Court: And the land, of course, has a minimum value of \$1,000 plus any increase it may have had since the time of [42] purchase. Now if that were the issue here I can see where the court would have jurisdiction.

Mr. Phelan: Does the court think——

The Court: But you have come into court alleging that you had a reasonable rental value of \$225 a month and you haven't proven that.

Mr. Phelan: Yes, but the property is worth over \$2,000 and we want the property.

The Court: That isn't the test here, is it?

Mr. Phelan: I think it is.

The Court: Hand that to Mr. Phelan.

Mr. Phelan: I think that under subsection 4 of Section 82: "In all cases at law under the laws of Guam in which the demand, exclusive of interest and costs, or the value of the property in con-

troverſy does not amount to more than \$2,000, except caſes which involve the legality of any tax, impoſt, aſſeſſment, toll or fine,”—I think there is no queſtion that the property is valued in exceſs of \$2,000.

The Court: The defendant iſn’t aſking me to try title here. The only iſſue before me, under the pleadings, is who is entitled to poſſeſſion.

Mr. Phelan: No, if it pleaſe the court, we ſaid we owned it. The defendant came in and ſaid we didn’t. Now if that iſn’t a ſquare iſſue as to who owns it——

The Court: It is poſſible that you may own property [43] without being entitled to the right of ejectionment in which event, ſince the Legislature has ſpoke here, the court has to determine whether or not, under your pleadings, the evidence on this prima facie caſe ſhows that you belonged to this court from the beginning.

Mr. Phelan: If it pleaſe the court, we can allege a rental value and if we do not have the proof at that time, it is ſubject to later proof. Now in an accident caſe a man may allege \$10,000 worth of injury and the proof may ſhow \$500, but this court would have juriſdiction. I do not think the juriſdiction is to be determined at the end of the caſe by what the proof finally comes out in the amount of damage.

The Court: Well, Mr. Phelan, if you follow that reaſoning, the court would always have juriſdiction at the will of any plaintiff who alleged that damages were in exceſs of \$2,000.

Mr. Phelan: If he does so in good faith, I don't think there is any question that it should go into this court.

The Court: When there has been color of title and color of right then the only way I can construe this litigation is in the light of federal ruling where there is a minimum of \$3,000.

Mr. Phelan: If it please the court, we have a different problem here than in any other federal court. Basically this court was given by the United States Congress all jurisdiction.

The Court: Yes.

Mr. Phelan: Therefore I feel that in construing the jurisdiction the rule of the constitutional district court should [44] not be strictly applied since the court, unlike the constitutional courts, started with all jurisdiction.

The Court: Started with all jurisdiction and then jurisdiction was transferred, as the Legislature had a right to do. In transferring jurisdiction the court said, "Well, now, you take anything over \$2,000 minimum and certain other matters and the other court anything up to \$2,000," and in connection with this type of action now we are agreed, surely, that this is an action of ejectment for unlawful detainer?

Mr. Phelan: No, the factors in a case like this then even with a rental value of \$5,000 a month it would be impossible to know whether this court had jurisdiction. How could one possibly seek in this type of case a trial before the District Court if

you must go beyond the honest allegations and brief of the plaintiff at the time of his action.

The Court: Well that statute says where the rental is \$200 a month, over \$200 a month.

Mr. Phelan: That is, if your honor please, where you have a tenant and an agreed rent. Here you have a case of a man paying no rent and the landlord wants him out.

The Court: I think that would be true if you had a controversy, but you don't have. Your own evidence shows that it was a maximum of \$100 a month.

Mr. Phelan: That is on the trial, but does your honor question this one fact that if I have a watch that you can buy [45] any place for \$25 and you want this watch and I say I will sell it for nothing less than \$100—in valuing the watch it would be \$25—but here is a case where the plaintiff owns this land. He says “I want that man to pay \$225 a month or get out.” There is no agreement as to what the rental is. He has a right to set any amount he wants because he doesn't want him there. He wants to use that property, and I think he has a right to set any price he wants and place it under the jurisdiction of this court.

The Court: Well, you set forth here that you are the owner of the property.

Mr. Phelan: I think we have proven that.

The Court: That the defendant is holding over.

Mr. Phelan: Yes.

The Court: That you have notified him to leave,

that he didn't leave and that you were damaged to the extent of \$225 a month.

Mr. Phelan: Yes.

The Court: As a reasonable rental value. All right, now, your testimony shows that the reasonable rental would not be more than \$100 a month.

Mr. Phelan: If it please the court, if there was a question of jurisdiction it should have been decided before the case was tried. If you take jurisdiction in an accident case and at the end of the case the defendant wins because there was no damage, would you then say you had no jurisdiction to hear the case [46] because he could prove no damage?

The Court: That isn't the question here.

Mr. Phelan: You are asking us before we file a complaint to prove the rental.

The Court: My problem in this case is how can I set a precedent under the terms of which a plaintiff could avoid the proper jurisdiction of the Island Court by the simple device of alleging a reasonable rental greater than \$200 a month? If the rental value of the land was only \$10 a month, you could still come into the District Court by simply saying it was over \$200, thereby circumventing the intention of the Legislature in the jurisdiction of these courts. Now if the defendant had come in here and said, "We own the land and we want title in us," because they want it as against this defendant then you would have a cross-complaint which would give the court jurisdiction. But all they are doing is setting up a defense to your action in ejectment.

Mr. Phelan: I won't say that claiming title is a defense. Under your reasoning, Judge, you are forcing the plaintiff to prove his case before he files his complaint.

The Court: No, I am forcing the plaintiff to prove his case by evidence the facts he alleges in his complaint.

Mr. Phelan: But to prove the evidence you must have jurisdiction.

The Court: I have jurisdiction now under the allegation. [47]

Mr. Phelan: Can you lose jurisdiction because you can't prove title?

The Court: Under this statute if the jurisdictional amount alleged is not shown by the evidence. The statute provides that when it appears—it doesn't say what portion—when it appears that the jurisdiction is not in that particular court then the court must transfer it to the other court. How many times have we ended up with cases of misdemeanors? Just last week the evidence alleged a felony; the proof showed a misdemeanor. All I could do in that case was to actually dismiss it.

Mr. Phelan: Well, if you didn't have jurisdiction you couldn't dismiss, could you, Judge?

The Court: I dismissed it for lack of jurisdiction.

Mr. Phelan: Well, I can't agree with you in your reasoning on the jurisdiction. If the complaint is alleged in good faith, I think you have jurisdic-

tion. What you can prove later—you might not prove anything.

The Court: Well, now, is it your reasoning, Mr. Phelan, that any time you want to try a forcible entry and detainer suit where the rental is not certain you can circumvent the jurisdiction of the Island Court by bringing it in the District Court?

Mr. Phelan: I don't like the word "circumvent." If, in good faith I allege the damage is sufficient, I think I have the right to bring it in the court with that jurisdiction. [48] I couldn't request this relief in the Island Court because on the face of it it is beyond their jurisdiction, and I don't have to rent my property to any individual for what the appraiser says it is worth.

The Court: I am not talking about that. I am talking about what you alleged.

Mr. Phelan: I alleged that it is worth \$225 a month and he should pay that for using it.

The Court: Yes, but the outside rental value is \$100.

Mr. Phelan: The basic thing is the value of the property to him. My Client doesn't want to rent the property; he wants the property itself, and if anybody is going to keep him from using it, he wants \$225 a month.

The Court: Your alleged value here of \$3,000.00 is clearly not inserted for any other purpose except to show the reasonable rental value.

Mr. Phelan: I beg to differ, Judge. I have to allege a financial amount to get into your court.

The Court: Well, that is \$2,000.

Mr. Phelan: I didn't allege \$2,000.

The Court: You alleged that the property is valued in excess of \$3,000 and has a reasonable rental value of \$225 per month.

Mr. Phelan: Yes.

The Court: Well, the only thing, frankly, that bothers me [49] here is where the defense of ownership in view of the allegations and clearly the allegation does show that the amount of the present value of the property is greatly in excess of \$2,000, and you have set up a defense of ownership of the property and the plaintiff—and I strongly suspect that if the matter were transferred to the Island Court, the Island Court would very quickly transfer it back to the District Court. If you continue with your defense of ownership, then you have to admit that the amount in controversy is in excess of \$2,000, don't you?

Mr. Arriola: Even assuming, your Honor, that the pleadings on the part of the plaintiff as good, as a motion to dismiss, but this is the plaintiff's case. He must show that *prima facie*, and he hasn't shown from the evidence that the court has jurisdiction of the matter.

The Court: Of course the court has to consider your answer, too. If your answer was simply that you were entitled to possession of the property, then I would agree with you. Then I would think it was simply a question of whether or not or who had the better right to possession of the property, but when you have alleged ownership and the plaintiff

has shown the value of the property as being in excess of \$2,000, I suspect it would just be wasting time in both courts if you transferred it. If you transferred it to the Island Court and attempted to establish ownership then the amount in controversy exceeds \$2,000 [50] and on motion would be returned to this court, so I raised the question and I will now hold that under the pleadings and evidence introduced by the plaintiff that the court has jurisdiction. Now do you have any other motion?

Mr. Arriola: No other motion. The plaintiff rests?

Mr. Phelan: Yes. [51]

JOSE C. VILLAGOMEZ

called as a witness hereby and on his own behalf, the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Arriola:

Q. You are the defendant in this case, Mr. Villagomez? A. Yes.

Q. Where are you residing, Mr. Villagomez?

A. Mangilao, Barrigada.

Q. Are you residing on Lot 2288?

A. Yes.

Q. Is your house situated on that lot now?

A. Yes.

Q. When did you first build or construct that house? A. In February, 1937.

(Testimony of Jose C. Villagomez.)

Q. Was that your land at the time?

A. It was supposed to be my land because I bought it from my brother-in-law somewhere in December, 1936.

Q. Who is your brother-in-law?

A. Jesus Untalan.

Q. The witness who testified for the plaintiff previously?

A. Yes, sir.

Q. How much did you pay him for that lot?

A. \$125.

Q. Did you or have you had any written instrument pertaining [52] to the sale of that lot from him to you?

A. We didn't have anything written, but I have a witness when I give him the \$125 at his home.

Q. When you purchased that lot from Mr. Untalan, was that lot free of taxes as far as you know?

Mr. Phelan: I must request the court to ask the defense counsel not to do the testifying and ask the witness to verify his testimony.

The Court: That is correct. That is a leading question.

Q. (By Mr. Arriola): Mr. Villagomez, you are still residing in that house, are you not?

A. Yes, sir.

Q. Have you paid any taxes on that lot?

A. When I bought that land from Mr. Untalan, when I went to the Records and Accounts to pay the tax the following year at the same time I found out that I can't pay the year's tax from that date, because it has been delinquent for three years.

(Testimony of Jose C. Villagomez.)

Mr. Phelan: That is not responsive to the question. It has no bearing on it.

The Court: This is part of their defense, that they are owners of the land. Should they show ownership, out of the statute of frauds they are probably trying to show adequate consideration.

Mr. Phelan: The question was did he pay the tax. He can say "Yes, I did," or "No, I did not," It is cluttering up the [53] record.

Examination by the Court

Q. Who paid the tax?

A. I paid the tax.

Q. In what year?

A. In the name of Jesus B. Untalan.

Q. For what period of time?

A. Since 1936. I said I redeemed the delinquency for three years. Mr. Francis D. Flores was there and he issued me a statement according to the delinquent tax and the penalty due.

Direct Examination

(Continued)

By Mr. Arriola:

Q. And do you have in your possession any receipts for those taxes you paid?

A. I lost them during the war.

Mr. Arriola: No further questions.

(Testimony of Jose C. Villagomez.)

Cross-Examination

By Mr. Phelan:

Q. Mr. Villagomez, you said you paid taxes in the name of Jesus Untalan? A. Yes, sir.

Q. You said you bought it. Did you have a deed?

A. We do not have a deed.

Q. You do not have a deed. You never recorded any deed? A. Never recorded any. [54]

Q. Isn't it true that your wife owned the adjacent property next to it? A. Yes, sir.

Q. Isn't it a fact that you told Mr. Untalan that you were building your house on that lot?

A. Mr. Untalan helped us build the house there when I erected the house.

Q. Would you answer my question? Isn't it a fact that you told him that you were building your house on Lot 2289? How big is Lot 2289?

A. I do not know the exact measurements.

Q. Approximately?

A. Maybe about—the whole land is about close to three acres.

Q. And that wasn't big enough to build a house on?

A. We bought the land; it was the whole thing.

Q. You bought that land? A. Yes, sir.

Q. That land didn't come from Mrs. Villagomez' father's estate, Mr. Guzman? A. No, sir.

Q. You say there is not a record of the distribution to Mr. Guzman's heirs?

(Testimony of Jose C. Villagomez.)

Mr. Arriola: I don't think that has any relevancy.

The Court: What is your theory? [55]

Mr. Arriola: Well, the question is in controversy as to who has the better right.

The Court: Who has possession—the question here is who is entitled to possession.

Mr. Arriola: The old estate doesn't have any bearing.

The Court: Well, you don't deny, do you, that according to the records, Mr. Sauget is now the owner of the land in question? You have admitted proof without objection to that.

Mr. Arriola: No, sir, but this is estate land belonging to the estate of Guzman, which I never heard before.

The Court: But you put on evidence that the land is in the ownership of the defendant. Now counsel is examining as to whether that statement was made in good faith.

Mr. Arriola: I will withdraw my objection.

Mr. Phelan: Will you read that question back?

(The reporter read the last question.)

A. Who is this Mr. Guzman?

Q. (By Mr. Phelan): The question I asked was, you have denied that there is a record of the mutual distribution to your wife and her brothers and sisters of her father's estate and that it covered Lots 2288 and 2289? Juan Untalan Guzman—is he your wife's father?

(Testimony of Jose C. Villagomez.)

A. He is my wife's father.

Q. And you deny that it was through the mutual distribution of his estate that your wife got 2289 and Jesus got 2288? [56]

A. At first I didn't understand the name Guzman. What I know is Juan Untalan and not Guzman. Well, there was a distribution and my wife received that portion.

Q. Received what portion of land?

A. 2289. That piece before was only one piece and then it was divided by a road and I do not know what numbers they put.

Q. Now Mr. Villagomez, do you pay taxes on 2289? A. That is Untalan's property?

Q. Your wife's property? A. Yes, sir.

Q. Are you not paying taxes on a house on that property?

A. There is two small houses on the other side of the road on which I pay taxes.

Q. Aren't you paying taxes on the house where you are now living, as being on Lot 2289?

A. I paid tax but the lot was not included in it.

Q. Have you got tax bills to show that?

A. There.

The Court: His answer is that he pays taxes on the house, but the lot is not included.

Mr. Phelan: It is my understanding that the house is shown on 89.

Q. (By Mr. Phelan): Is that the tax bill?

A. Yes, sir.

Q. Is that the tax bill you paid? [57]

(Testimony of Jose C. Villagomez.)

A. Yes.

Q. That is your house? A. Yes.

Q. 2289 was typed in as the lot number?

A. And there is another one.

Q. Is that in your handwriting?

A. No, that is by Mr. Juan Salas. I wrote this down when I asked him about this land here, 770.

Q. Is not 2289 your wife's lot?

A. Yes, but there is no house on there.

Q. That is the tax bill you paid?

A. Yes.

Q. Mr. Untalan, or Mr. Villagomez, does it not value the land here at \$770?

A. I do not know how they put that, sir.

Q. Well, I am not asking you to explain how it got there. I am asking what it is. Doesn't it show what the land is worth and the building worth?

A. They were making a mistake. They are thinking this house was situated on 2289.

Q. I am just asking isn't that what the bill shows? A. I don't think so.

Q. Doesn't it say 770 land and doesn't it say 560 on improvements?

A. Yes, the house, but they are mistaken. [58]

Q. Well, we are not going into that. That is what this tax bill that you paid shows. Now you have no deed to this property?

A. Which property?

Q. Your brother-in-law's property?

A. No, sir.

Mr. Phelan: I have no other questions.

Mr. Arriola: No further questions.

(Testimony of Jose C. Villagomez.)

Examination by the Court

Q. When did you first pay taxes on 2288?

A. That is my wife's property or——

Q. Well, the present property where your house is.

A. I was paying taxes since 1936, sir.

Q. Since 1936? A. Yes, sir.

Q. But you say you always paid them in the name of Jesus Untalan?

A. In the name of Jesus Untalan.

Q. Now tell me—if you thought that you owned this land, why didn't you obtain title to it? Why didn't you obtain the deed?

A. I was but at that time I went to the court and I inquired of the clerk of the court to make a bill of sale and have it recorded in court and the papers was ready and every time I see my brother-in-law, he told me that he has no time to come down to sign the papers. [59]

Q. And what year was that?

A. That was in 1937.

Q. 1937?

A. Yes, sir, and every few months when I saw him again he still has no time until the war comes then everything closed up.

Q. Now was any farming done on 2288, Lot 2288?

A. Before the war?

Q. No, after the war.

A. The FEA occupies it—the whole land except a small portion where my house is.

(Testimony of Jose C. Villagomez.)

Q. And did you do any farming there?

A. Before the war?

Q. Yes. You farmed that land before the war?

A. Part of it, not all of it.

Q. Did Mr. Jesus B. Untalan do any farming on that land?

A. When he was occupying the land he farms a little, too.

Q. And when did he occupy it?

A. He was living there somewhere around 1935.

Q. Is it your testimony, Mr. Villagomez, the property was turned over to you about 1935?

A. 1936.

Q. 1936 the property was turned over to you?

A. Yes, sir.

Q. And that Mr. Untalan did not pay any taxes on the property since that time. [60]

A. I don't mean since that time but when I bought the land it was delinquent for three years. Mr. Flores was auditor at that time and he told me.

Q. What years were those?

A. That was 1936 when I come to pay the tax I paid for Mr. Untalan.

Q. You paid for '34 and '35 as well?

A. Yes, sir.

Q. And when did you pay over the \$125?

A. The early part of December.

Q. Of what year? A. 1936, the same year.

Q. And when did you start building your house?

A. On February, 1937. Before I bought this land

(Testimony of Jose C. Villagomez.)

Mr. Untalan moved away from that place and he lives in his other ranch. Then a man and woman called Aguan occupies this land before I bought it. Then when I bought this land from Mr. Untalan this woman and her husband was looking for another place to live because my brother-in-law told her already to find some place to live because I bought the land. I told this woman that it is not necessary for her to move until she could find a place to live.

The Court: Any questions, gentlemen?

Mr. Phelan: I have no questions.

Mr. Arriola: No questions.

The Court: Very well, the court will stand recessed until [61] 1:30.

(The court recessed at 12 a.m. and reconvened at 1:30 p.m.)

FRANCISCO D. FLORES

called as a witness hereby and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Arriola:

Q. Will you please tell your name?

A. My name is F. D. Flores.

Q. Your residence, Mr. Flores?

A. Agana Heights.

Q. Your occupation?

A. At the moment I am operating a little store up there.

(Testimony of Francisco D. Flores.)

Q. What did you do before that?

A. Government of Guam, assistant auditor of records and accounts.

Q. Were you occupying that position on or about 1936? A. I was.

Q. What were some of your duties at that time, 1936 to 1937?

A. Well, it embraced quite a number of duties there, among which were the registration of births, issuing of licenses, collection of taxes and the financial aspects of the Naval Government of Guam.

Q. When you said collection of taxes did that include collection of real estate taxes? [62]

A. Real estate taxes.

Q. Do you know the defendant here, Mr. Villagomez? A. I do.

Q. In the course of your official duties did you have the occasion to deal with the defendant with reference to Lot No. 2288, Barrigada?

Mr. Phelan: May it please the court, I believe the testimony which the defense counsel is attempting to produce is improper and cannot be admitted. I refer the court to Section 1855 (a) of the Code of Civil Procedure of Guam. Taxes and tax records are public records and speak for themselves. They cannot be proven by oral evidence and we are wasting the court's time to do so. This section says how and under what conditions it can be proven.

The Court: Well, we haven't reached that point yet, Mr. Phelan. Tax records, as we know, are public records and constitute the best evidence, but so

(Testimony of Francisco D. Flores.)

far the witness has not been asked to testify as to what is contained in a tax record.

Mr. Phelan: I can see no relevancy in any of his testimony.

The Court: Well, all questions to date are preliminary.

Mr. Phelan: I will reserve my objection.

Mr. Arriola: Please read the question back to the witness.

(The reporter read the last question.)

A. To the best of my recollection, knowing the defendant personally, I remember on one occasion when he came in to the [63] Records and Accounts and asked to redeem a certain lot in Mangilao, Barrigada.

Q. Did you keep any records for any transactions pertaining to redemption of lots?

A. At the time we did.

Q. Are those records still available?

A. I don't know because I left the office of Records and Accounts two years ago. I think the cash records where those payments were recorded, to the best of my knowledge, were still in.

Q. They were still in the Department of Records and Accounts?

A. In the Department of Records and Accounts.

Q. And will you elaborate the manner in which you dealt with the defendant pertaining to lot 2288?

Mr. Phelan: I must object to that on two grounds: He didn't say he dealt with him in respect

(Testimony of Francisco D. Flores.)

to that lot and the records will speak for themselves.

The Court: That is correct. His testimony is to the effect that the defendant negotiated with him in connection with the redemption of certain lots, but of course, Mr. Flores has not attempted to identify the particular lots involved.

Mr. Arriola: I asked him, sir, about Lot No. 2288, Barrigada.

The Witness: I am not in a position at the moment to remember the actual number of the lot, but in referring to the property [64] that was redeemed it was a certain piece of property in Mangilao, Barrigada. As to the number of the lot, I don't know.

Mr. Phelan: This testimony then is irrelevant and immaterial.

The Court: It may be cumulative. I will overrule the objection. The defendant has already testified that he did pay the taxes in 1936 on Lot 2288.

Mr. Phelan: The best evidence would be the records of the Government of Guam. I think in the absence of the best evidence——

The Court: The defendant has already testified and without objection he said he paid the taxes continuously in the name of Jesus Untalan.

Mr. Phelan: Yes, and the only tax receipt he produced was 2289.

The Court: Now Mr. Flores has testified to say that he knew the defendant and the defendant did redeem or pay taxes on some lot or lots in Barrigada. Now that, of course, is not——

(Testimony of Francisco D. Flores.)

Mr. Phelan: I believe Mr. Flores said he talked to him about the redemption of a lot, not that he paid it, but that he talked to him.

The Court: I think Mr. Flores said he paid some——

The Witness: As a matter of fact—may I?

The Court: Yes.

The Witness: He came in and asked for redemption of the lot, requested redemption of the lot in question, and I made out the proper—went into the proper procedure and prepared the [65] required tax statement at the time for redemption, and he is the one I remember coming in and got that statement from us and after turning that statement over to him, he went over to the cashier. I don't know if he paid it there. I told him to pay that at the proper window.

Q. (By Mr. Arriola): Mr. Flores, did you know who owned that lot? A. It was——

Mr. Phelan: I object to this. Who owned the lot is immaterial.

The Court: That objection is sustained. The ownership, the record ownership, as I understand it, by stipulation of counsel, was not in dispute.

Mr. Arriola: I just wish to corroborate the defendant's——

The Court: The record of ownership in 1936 was Jesus Untalan.

Mr. Phelan: Well, Mr. Flores has testified that he doesn't recall the number of the lot. How can we

(Testimony of Francisco D. Flores.)

discuss who owns the lot when he does not know which lot?

The Court: Whether he remembers or not it has no bearing on this at the moment because you have agreed as to the ownership of the lot.

Mr. Arriola: I have no further questions of the witness.

Mr. Phelan: I have one question. [66]

Cross-Examination

By Mr. Phelan:

Q. Mr. Flores, do you remember when Mr. Villagomez spoke to you what year it was?

A. To the best of my recollection I think that thing happened during the latter part of the year 1936.

Mr. Phelan: I have no further questions.

Examination by the Court

Q. It is your best recollection, Mr. Flores, that the records of tax payments for those years are still available in Records and Accounts?

A. I don't know at the moment.

Q. But that was your impression when you left Records and Accounts two years ago?

A. When I left Records and Accounts two years ago I am pretty sure that as far as the record of cash payments, I understand they are still there. Of course, they are not filed in the up to date filing, but it is somewhere around there.

The Court: Thank you very much, Mr. [67]
Flores.

D. M. SALAS

called as a witness hereby and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Arriola:

Q. Please state your name.

A. D. M. Salas.

Q. Your occupation?

A. Treasurer of Guam.

Q. How long have you occupied that position?

A. 29 years.

Q. Were you occupying that position some time during the year 1936?

A. No, as a cashier of the Naval Government of Guam.

Q. What were some of your duties as cashier of the Naval Government of Guam?

A. Just to collect the government revenue and the property taxes.

Q. Did that include real property taxes?

A. Right.

Q. Do you know the defendant, Mr. Villagomez?

A. Yes, sir.

Q. Did you have occasion to deal with him as cashier with reference to the payment of real estate taxes?

Mr. Phelan: I must object to that, your honor. The records [68] will speak for themselves.

Mr. Arriola: I haven't asked him about the contents of the records, your honor.

(Testimony of D. M. Salas.)

The Court: Yes, he asked whether he had occasion to deal with him with reference to the payment of taxes.

Mr. Phelan: Supposing he had. If the taxes were paid, let the records be produced.

The Court: I don't know what the next question will be.

Mr. Phelan: I think it's quite obvious, your honor, that this is an attempt to prove records by parol testimony instead——

The Court: Let us wait until we get to that. The witness will answer. The question is whether you had occasion to deal with Mr. Villagomez in connection with the payment of taxes.

The Witness: Beg pardon?

The Court: The question was whether you had occasion to deal with Mr. Villagomez in connection with the payment of taxes.

The Witness: I was collector at that time.

The Court: The answer is that you did.

Q. (By Mr. Arriola): Now did you keep any records in your dealings as tax collector at the time?

A. Oh, yes, I had a record in the cash book but all cash books were destroyed.

Q. Destroyed?

A. During the bombardment.

Q. Did the Government of Guam have any records pertaining [69] to the payment of taxes before the war?

A. Before the war, yes.

Q. Do you have that now?

(Testimony of D. M. Salas.)

A. No, all destroyed.

Q. To the best of your recollection, Mr. Salas, did the defendant personally pay any real estate taxes?

Mr. Phelan: I must object, your honor. I invite your honor's attention to the last sentence of Section 1855a on page 216, Code of Civil Procedure, regarding this attempt to prove the records no longer in existence: "Provided, nevertheless, that any party so desiring to use said evidence shall give reasonable notice in writing to all other parties to the action who have appeared therein, of his intention to use the same at the trial of said action, and shall give all such other parties a reasonable opportunity to inspect the same, and also the abstracts, memoranda, or notes from which it was compiled, and to take copies thereof." If this is an attempt to prove lost records, they must be proven in accordance with the Code.

The Court: Let me see the Code.

Mr. Phelan: It starts at the bottom of the page and runs over to the top of the next page.

The Court: The objection will be sustained.

Mr. Arriola: Is that on the ground of the best evidence rule, your honor?

The Court: Under the best evidence rule and the provisions [70] of the Code. You must give notice in advance as to how you expect to prove from secondary evidence, "Any party desiring to use such evidence shall give reasonable notice in writing to all other parties to the action who have

(Testimony of D. M. Salas.)

appeared therein, of his intention to use the same at the trial of said action, and shall give all such other parties a reasonable opportunity to inspect the same, and also the abstracts, memoranda, or notes from which it was compiled, and to take copies thereof." Now in this case we have purely the memory of the witness. There is nothing you can examine.

Mr. Phelan: The section provides what secondary evidence will be admissible, abstracts, notes, and the preceding witness testified that two years ago these records did exist or a part of them.

The Court: Well, that is just Mr. Flores' recollection.

Mr. Phelan: Well, Mr. Flores testified to the fact that they did exist and I have personal knowledge that some of those records did exist four years ago when I was Assistant Attorney General of the Government of Guam. What state they are in I do not know, but I know some of them did exist.

Mr. Arriola: These are tax receipts, not records of any sort.

Mr. Phelan: I don't think we can take it as a blanket statement that all prewar records of the Government of Guam were destroyed. [71]

Mr. Arriola: Not the Government of Guam, just the cashier's.

Mr. Phelan: He doesn't know what records have been destroyed.

The Court: I must hold that there is not sufficient foundation at this time for the introduction of secondary evidence.

(Testimony of D. M. Salas.)

Mr. Arriola: Your honor, this witness has testified that these records were burned during the war.

The Court: He hasn't testified they were burned; he testified they were destroyed during the bombardment.

Mr. Phelan: Flores testified that they hadn't been destroyed two years ago and the war was over ten years ago.

The Court: He said he thought the cash books were still over there. I will sustain the objection.

Mr. Arriola: I have no further questions.

Mr. Phelan: I have no questions.

The Court: You may be excused, Mr. Salas.

Mr. Arriola: The defense rests, your honor.

Mr. Phelan: I don't believe that there is any question as to where record title is. However, one of the defenses which the defendant brought in here I would like to make a passing comment on. Section 1157.34 of the Civil Code of Guam states: "Title not acquirable by adverse possession. After land has been registered, no title there to adverse or in derogation to the title of the registered owner shall be required by any length of possession." With respect to the allegation of [72] adverse possession in the answer, I think that knocks that out. We have proven that the property was in the name of Jesus B. Untalan, a part was sold to the Naval Government of Guam of the United States, the remaining portion was sold to the plaintiff. The defendant has admitted receipt of the revocation of oral permit to use part of this land. We have shown title in the plaintiff and notice to quit. They have not

shown any right to use the land or any title adverse to the plaintiff. The only tax bill which Mr. Villagomez brought in this morning refers to a lot owned by his wife and admitted that covered the house. He has said he paid the taxes. We have produced a tax receipt, 1953, in the name of Mr. Untalan and Mr. Untalan said he paid it. The presumption is when a man's name is on a thing and he says he did it, he did. Mr. Villagomez himself testified that for 15 years he discussed the deed every two or three weeks but he hasn't got it yet. He has no deed, no title. He said he paid taxes but in the name of Jesus B. Untalan. I think beyond a doubt, beyond a reasonable doubt, plaintiff is entitled to possession of that property, including the house. If Mr. Villagomez has any recourse, I can't see that it can be against my client.

Mr. Arriola: May it please the court, I think there are sufficient documents with the Department of Land Management showing that defendant here has some right to the property, 2288, one of which is Exhibit No. 3, showing Lot 2288-new-1 [73] with the signature of Jose C. Villagomez. Another is the warranty deed from Villagomez' wife and Jesus B. Untalan to the Government of Guam for a portion or part of Lot No. 2288. I think it's sufficient notice to the plaintiff, plus the possession of the defendant on the lot itself, that that is sufficient notice that there was somebody on that lot and some claim to the lot.

Mr. Phelan: If the court please, the statutes

speak for themselves and Mr. Villagomez has no title to Lot 2289, either. That is the property of his wife as shown by the mutual distribution of the estate of Mrs. Villagomez' father, the father of Jesus B. Untalan.

The Court: Are you both through?

Mr. Phelan: Yes, sir.

Mr. Arriola: Yes, sir.

FINDINGS OF THE COURT

The Court: The court finds the issues joined in this case in favor of the defendant and against the plaintiff. The evidence in this case shows that a certain lot, No. 2288, in Barrigada was registered in the name of Jesus B. Untalan and was sold to the plaintiff in this case for a consideration of \$1,000. The amount of land actually available for use which had not been disposed of prior to this time was approximately 858 square meters. On that 858 square meters the defendant had constructed a residence in 1937, in February of 1937, and has testified without rebuttal, though Mr. Untalan is in the courtroom, that Mr. Untalan helped construct that house at the time [74] it was built. The defendant has testified that in 1936 he purchased the land in question for \$125, that he paid certain back taxes and that he continued to pay taxes on the land in the name of the registered owner but did not obtain title to the property. The plaintiff in this case has testified that prior to the time that he purchased the property he did not investigate the land nor go upon the land nor consult the defendant or in any

other way determine whether there were claimed rights adverse to those of Mr. Untalan. While this is simply an action in ejectment, the court is not required to try the title on this land. In this particular action it isn't required to determine as between these parties where title might rest in the appropriate action, but the plaintiff's own evidence has shown that with the improvements on the property, it had an actual value of from \$6,000 to \$10,000. Now this is only a few months ago and obviously a consideration of \$1,000 was completely inadequate to acquire property of that value, including the house which had been built. Also the plaintiff was on notice in the deed itself that there was an adverse claim, which the grantor called a license. The grantor is obviously an aged Guamanian who required the services of an interpreter, and the court seriously doubts whether he has the vaguest knowledge of what the word "license" meant in his deed. Certainly what he intended to do was to put the plaintiff here on notice that the defendant claimed the land adversely although [75] he thought it improper.

Mr. Phelan: May it please the court, I say he can't claim adverse——

The Court: The court will reach that. The defendant was in open and notorious possession of this land with no evidence to the contrary since 1937 when he built the house. He claims that that possession was built upon an oral agreement to purchase. An oral agreement in 1937 or '36 was not valid unless it was in writing and signed by the

person to be bound. The law of this jurisdiction is perfectly clear that partial performance and reliance upon an oral agreement and referable to the oral agreement takes the transaction out of the statute of frauds. Therefore, the court must find that in this action the plaintiff has not demonstrated that he has superior right to immediate possession of this land over and above the right of the defendant, who was in open and notorious possession under a claim of ownership and who had constructed a home of the present value of from \$4,000 to \$8,500; that the plaintiff was on notice that unless he made inquiry of the defendant or any one else in possession of this land prior to the time that he purchased the land, he was bound by any rights which existed. Any person who buys land is bound by the rights of persons who are in open and notorious possession of that land under claim of right. You can't just idly buy land with a house on it, people living in the house and so forth and then say, "Because the grantor [76] told me that you were a mere licensee you are estopped as against me from showing that you have something else." Any rights that this defendant may have had against a grantor he has against this plaintiff. Now in conclusion all I am saying is that in this action, which is purely possessory, I hold that at this time the plaintiff did not have any right to force the defendant to give up possession of his home and land. The court can but add this: The situation with which we are confronted here is not uncommon, especially when friendships and family relationships are involved.

It is not uncommon at all for people to build houses and live on the land in informal fashion. In 1936 the codes which had been adopted were of recent origin or prior to the adoption of a code, the Spanish civil law existed in Guam and it is my understanding that under the Spanish civil law it was quite possible to own a house or building affixed to land without owning the land, one of the things which were a peculiar but unfortunate practice that the people had, but I think I would be doing violence to the very concept of justice if I held that a person for a consideration of \$1,000 could force a man to give up what he has had since 1937 but has a present value of many times \$1,000. I therefore accept the defendant's version, that he is entitled to continued possession of this land in so far as this action is on the basis that he was in open and notorious possession under claim of ownership and that the plaintiff was on notice [77] to that effect. The defendant will prepare an order in this case and settle within ten days, finding judgment for the defendant. Any further questions?

The Clerk: No other matters, your Honor.

The Court: There being no further matters to come before the court, the court will stand adjourned.

(The court adjourned at 2:20 p.m., October 7, 1954.) [78]

District Court of Guam,
Territory of Guam—ss.

I, Dorothy L. Wilkins, Official Court Reporter for the District Court of Guam, hereby certify the above and foregoing to be a true and correct transcript of the stenographic shorthand notes taken in the above-numbered case at the said time and place as set forth.

/s/ DOROTHY L. WILKINS,
Official Court Reporter.

[Endorsed]: Filed December 6, 1954. [79]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Roland A. Gillette, Clerk of the District Court of Guam, for the Territory of Guam, M. I., do hereby certify that the following documents, to wit:

1. Complaint, filed August 12, 1954.
2. Answer, filed August 31, 1954.
3. Judgment, entered October 22, 1954.
4. Notice of Appeal, filed November 3, 1954.
5. Bond for Costs on Appeal, filed December 6, 1954.
6. Statement of Points on Appeal, filed December 6, 1954.
7. Designation of Contents of Record on Appeal, filed December 6, 1954.
8. Reporter's Transcript of Record, filed December 6, 1954.

9. All Exhibits, Plaintiff's Exhibits I through V, inclusive, filed October 7, 1954.

10. Certified copy of the Minutes.

are the original or certified copies of the documents filed in the above-entitled case.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid court at Agana, Guam, M. I., this 10th day of December, A.D. 1954.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk of the Court.

[Endorsed]: No. 14605. United States Court of Appeals for the Ninth Circuit. Francis L. Sauget, Appellant, vs. Jose C. Villagomez, Appellee. Transcript of Record. Appeal from the District Court of Guam, Territory of Guam.

Filed: December 18, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,605

FRANCIS L. SAUGET,

Plaintiff-Appellant,

vs.

JOSE C. VILLAGOMEZ,

Defendant-Appellee.

ADOPTION OF STATEMENT OF POINTS RE-
QUIRED BY RULE 75(d) AND DESIGNA-
TION OF CONTENTS OF RECORD UPON
APPEAL

The plaintiff-appellant hereby adopts the designation of contents of record on appeal designated pursuant to Rule 75(a), Federal Rules of Civil Procedure, and statement of points required by Rule 75(d), Federal Rules of Civil Procedure, heretofore filed in this cause in the District Court of Guam on the 6th day of December, 1954.

Dated at Agana, Guam, this 27th day of December, 1954.

/s/ FINTON J. PHELAN, JR.,
Attorney for Plaintiff-
Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 30, 1954.